



State of Wisconsin \ LEGISLATIVE AUDIT BUREAU

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September 19, 2003

Senator Carol A. Roessler and
Representative Suzanne Jeskewitz, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator Roessler and Representative Jeskewitz:

At your request, we have completed a limited-scope review of revenues and expenditures generated by fees and surcharges on pesticides and fertilizers used in Wisconsin. In fiscal year (FY) 2001-02, the Department of Agriculture, Trade and Consumer Protection (DATCP) collected \$6.8 million in these revenues and, consistent with statutory directives, transferred \$1.3 million to the Department of Natural Resources (DNR) and \$210,300 to the University of Wisconsin (UW) System. DATCP retained the remaining \$5.2 million to fund both the Bureau of Agrichemical Management and grants to help individuals and businesses clean up spills and discharges of pesticides and fertilizers.

From FY 1997-98 through FY 2001-02, DATCP awarded \$14.0 million through 315 cleanup grants to individuals or businesses. During the same period, DNR received \$6.5 million in funds for its activities.

DNR could provide only limited quantifiable information on staff activities related to pesticide and fertilizer issues. We include recommendations for DNR to better demonstrate how pesticide and fertilizer fees are used by modifying its time-keeping system in order to allow it to monitor pesticide and fertilizer-related activities. We also recommend DNR and DATCP complete and implement revisions to a memorandum of understanding that would ensure the timely exchange of useful program management information on spills and site cleanups.

We appreciate the courtesy and cooperation extended to us by DATCP, DNR, and UW System during our review.

Sincerely,

A handwritten signature in cursive script that reads 'Janice Mueller'.

Janice Mueller
State Auditor

JM/KW/bm

PESTICIDE AND FERTILIZER FEES AND SURCHARGES

From fiscal year (FY) 1997-98 through FY 2001-02, the State collected \$31.5 million in pesticide and fertilizer fees and surcharges to support regulation, inspection, cleanup, and research activities. The Department of Agriculture, Trade and Consumer Protection (DATCP) collects the funds and, as shown in Table 1, retained almost \$23.7 million, or 75.1 percent, in two accounts:

- the Agrichemical Management Fund, which pays for the regulatory, investigative, and enforcement activities of the Agrichemical Management Bureau at DATCP; and
- the Agricultural Chemical Cleanup Fund, which pays for grants to individuals and businesses to partially reimburse them for the costs associated with the cleanup of spills and discharges of pesticides and fertilizers.

Table 1

Distribution of Pesticide and Fertilizer Fee and Surcharge Revenue

<u>Recipient</u>	<u>1997-98</u>	<u>1998-99</u>	<u>1999-2000</u>	<u>2000-01</u>	<u>2001-02</u>	<u>Total</u>
DATCP						
Agrichemical Management Fund	\$4,463,323	\$3,739,411	\$3,791,966	\$3,666,486	\$3,762,511	\$19,423,697
Agricultural Chemical Cleanup Fund	2,755,959	11,766	0	0	1,461,245	4,228,970
Administration	<u>4,964</u>	<u>5,009</u>	<u>4,767</u>	<u>4,750</u>	<u>3,129</u>	<u>22,619</u>
Subtotal	\$7,224,246	\$3,756,186	\$3,796,733	\$3,671,236	\$5,226,885	23,675,286
DNR	1,285,324	1,289,306	1,308,651	1,301,126	1,326,637	6,511,044
UW System	<u>278,073</u>	<u>280,543</u>	<u>266,182</u>	<u>264,355</u>	<u>210,348</u>	<u>1,299,501</u>
Total	\$8,787,643	\$5,326,035	\$5,371,566	\$5,236,717	\$6,763,870	\$31,485,831

Statutes require funds from specific pesticide and fertilizer fees to be transferred to the Department of Natural Resources (DNR) or to the University of Wisconsin (UW) System. From FY 1997-98 through FY 2001-02, DNR received \$6.5 million, or 20.7 percent, of all funds collected, and UW System received \$1.3 million, or 4.1 percent. An additional 0.1 percent of the fees collected for UW System, \$22,619, has been retained by DATCP to support administrative costs.

Among the 26 different pesticide and fertilizer fees and surcharges, some apply to businesses and others to individuals. According to DATCP, payments in 2002 were made by approximately:

- 300 veterinary clinics that apply or repackage pesticides for animals they treat;
- agricultural cooperatives and farm centers operating 450 sites that sell certain pesticides;
- 560 licensed businesses, such as farm centers or agricultural cooperatives, that manufacture and/or label fertilizers;
- 1,100 licensed pesticide manufacturers and labelers; and
- 5,600 commercially licensed and certified pesticide applicators, such as those working for agricultural cooperatives, farm centers, household pest control companies, and lawn care companies.

1993 Wisconsin Act 16 transferred responsibility for the investigation and remediation of agricultural chemical spills from DNR to DATCP. Fees and surcharges were fixed at a rate expected to provide sufficient funds to conduct remediation and cleanups over a five-year period and not to generate significant fund balances. However, because of higher than expected registration of pesticide and fertilizer products and fewer requests for cleanup funds than expected, program revenues exceeded program costs and fund balances increased. To reduce fund surpluses, 1997 Wisconsin Act 27 established temporary management fund fee reductions and a temporary holiday for cleanup surcharges and provided DATCP with the authority to reduce future cleanup surcharges by administrative rule. Act 27 did not change the level of fees transferred to DNR and UW System.

The decline in revenues for both the management fund and the cleanup fund after FY 1997-98 was shown in Table 1. Both management fees and cleanup surcharges were returned to their full allowable level during FY 2001-02 and FY 2002-03.

Concerns have been raised about whether DNR uses the pesticide and fertilizer fees it receives to fund activities related to pesticides and fertilizers. In addition, questions have arisen regarding various transfers by the Legislature of unspent revenues from the management and cleanup funds and from UW System, and about whether DATCP and DNR have been coordinating their regulatory, enforcement, and cleanup activities. Therefore, we conducted a limited-scope review of the pesticide and fertilizer revenues received and the associated expenditures and activities at these agencies over the last five fiscal years. We also reviewed the current memorandum of understanding between DATCP and DNR that delineates the responsibilities of each agency. A review of the pesticide and fertilizer fee and surcharge structure and of case files of cleanup activities conducted by DATCP or DNR was beyond the scope of this review.

Department of Agriculture, Trade, and Consumer Protection

The Bureau of Agrichemical Management within DATCP's Division of Agricultural Resource Management carries out the State's regulatory and enforcement programs related to pesticides,

fertilizers, animal feeds, and other plant production and pest control materials used in agricultural, urban, and industrial settings. As noted, the Bureau receives administrative funding from the Agrichemical Management Fund, which in FY 2001-02 supported 49.6 full-time equivalent (FTE) staff. These staff in the Bureau of Agrichemical Management conducted pesticide and fertilizer-related activities, such as investigating complaints related to pesticides and fertilizers, and testing of groundwater for pesticide contamination. Among these were 11.6 FTE staff of the grant program, which is supported by the Agricultural Chemical Cleanup Fund.

As shown in Table 2, the Agrichemical Management Fund had a beginning balance of almost \$15.8 million in FY 1997-98, which included revenues to support the Bureau and cleanups. By the end of FY 2001-02, the management fund balance had declined to approximately \$2.6 million. Although expenditures increased during this period, the primary cause of the decline was the transfer of \$9.5 million to the Agricultural Chemical Cleanup Fund upon its creation by 1997 Wisconsin Act 27. The transfer was to occur on October 14, 1997, but did not occur until FY 1998-99. DATCP officials indicate that the transfer was untimely because of administrative delays. A secondary cause for the decline in the management fund balance was legislative action to reduce pesticide and fertilizer fees through December 31, 2002.

Table 2

Agrichemical Management Fund

	<u>1997-98</u>	<u>1998-99</u>	<u>1999-2000</u>	<u>2000-01</u>	<u>2001-02</u>	<u>Total</u>
Beginning Fund Balance	\$15,752,222	\$16,616,189	\$6,722,922	\$5,282,568	\$4,078,027	Not Applicable
Pesticide and Fertilizer Fee Revenue	4,463,323	3,739,411	3,791,966	3,666,486	3,762,511	\$ 19,423,697
Interest Revenue	457,747	391,979	352,402	305,811	71,639	1,579,578
Other Revenue ¹	<u>777,437</u>	<u>480,760</u>	<u>414,571</u>	<u>424,198</u>	<u>411,549</u>	<u>2,508,515</u>
Total Revenue	5,698,507	4,612,150	4,558,939	4,396,495	4,245,699	23,511,790
Expenditures	(4,834,540)	(4,970,396)	(4,999,293)	(5,601,036)	(5,758,335)	(26,163,600)
Transfer to General Fund	0	0	(1,000,000)	0	0	(1,000,000)
Transfer to Agricultural Chemical Cleanup Fund	<u>0</u>	<u>(9,535,021)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>(9,535,021)</u>
Ending Fund Balance	\$16,616,189	\$ 6,722,922	\$5,282,568	\$4,078,027	\$2,565,391	Not Applicable

¹ Includes penalties, refunds, and miscellaneous revenue.

Table 3 shows financial activity for the Agricultural Chemical Cleanup Fund from its inception through FY 2001-02, including the \$9.5 million transfer that increased the cleanup fund's FY 1998-99 ending balance to \$10.4 million. By the end of FY 2001-02, the cleanup fund balance had declined to approximately \$1.2 million, primarily because of increasing numbers of claims and allowable costs for cleanup grants, and a decline in revenues caused by the surcharge holiday that took effect in FY 1998-1999. The surcharge holiday ended December 31, 2001.

Table 3

Agricultural Chemical Cleanup Fund

	<u>1997-98</u>	<u>1998-99</u>	<u>1999-2000</u>	<u>2000-01</u>	<u>2001-02</u>	<u>Total</u>
Beginning Fund Balance	\$ 0	\$ 1,979,823	\$10,402,768	\$7,303,576	\$3,246,371	Not Applicable
Transfer from the Agrichemical Management Fund	0	9,535,021	0	0	0	\$ 9,535,021
Pesticide and Fertilizer Surcharge Revenue	2,755,959	11,766	0	0	1,461,245	4,228,970
Interest Revenue	<u>506,906</u>	<u>479,278</u>	<u>544,886</u>	<u>414,414</u>	<u>73,194</u>	<u>2,018,678</u>
Total Revenue	3,262,865	491,044	544,886	414,414	1,534,439	6,247,648
Cleanup Grants	(776,136)	(1,123,842)	(2,144,078)	(3,971,619)	(3,558,557)	(11,574,232)
Transfer to the General Fund	<u>(506,906)</u>	<u>(479,278)</u>	<u>(1,500,000)</u>	<u>(500,000)</u>	<u>0</u>	<u>(2,986,184)</u>
Ending Fund Balance	\$1,979,823	\$10,402,768	\$ 7,303,576	\$3,246,371	\$1,222,253	Not Applicable

We note that s. 94.73(15)(a), Wis. Stats., required DATCP to maintain an annual ending balance of between \$2.0 million and \$5.0 million in the cleanup fund, but 2003 Wisconsin Act 33 eliminated the minimum fund balance requirement and established a maximum ending fund balance of \$2.5 million.

Cleanup grant awards for the five-year period shown in Table 4 are funded both from pesticide and fertilizer surcharge revenue and from general purpose revenue (GPR) that was appropriated for this purpose beginning with 1993 Wisconsin Act 16. DATCP officials indicate that GPR funds spent for cleanup grants totaled approximately \$688,300 for FY 1997-98 and \$1.8 million for FY 1998-99. The Legislature has not appropriated GPR for cleanup grants since FY 1998-99; however, an appropriation line for this purpose continues to exist in statutes. 2003 Wisconsin

Act 33 reduces the grant funding from 80 percent to 75 percent of allowable cleanup costs, but maintained a maximum of \$400,000 per cleanup site.

Table 4

Cleanup Grant Awards

<u>Year</u>	<u>Amount¹</u>
1997-98	\$ 1,464,400
1998-99	2,874,600
1999-2000	2,144,100
2000-01	3,971,600
2001-02	<u>3,558,600</u>
Total	\$14,013,300

¹ This includes GPR of \$688,271 in FY 1997-98 and \$1,750,795 in FY 1998-99.

The expenditures shown in Table 4 reflect 315 grants to individuals and businesses and include sites identified since July 1, 1997, as well as some that had previously been approved for reimbursement.

Department of Natural Resources

Primary responsibility for pesticide and fertilizer issues at DNR resides within:

- the Watershed Management Bureau and the Drinking Water and Groundwater Bureau, both within the Division of Water, which monitor, enforce, and research state and federal laws related to water quality;
- the Bureau for Remediation and Redevelopment within the Division of Air and Waste, which oversees federal, state, and responsible party site contamination cleanups; and
- the Bureau of Waste Management, also within the Division of Air and Waste, which regulates and enforces the management of wastes at processing, treatment, recycling, storage, and disposal sites.

Pesticide and fertilizer fee revenue that DATCP transfers to DNR is deposited into DNR's environmental management account. Once deposited into the account, the revenue cannot be linked with specific program expenditures. For example, DNR managers report that for all

four bureaus, 81.0 FTE positions were funded by the environmental management account, as shown in Table 5. However, DNR could provide only limited quantifiable information on staff activities related to pesticide and fertilizer issues. Staff in the four bureaus are typically generalists who deal with many different types of issues. As noted above, only one of these is related to pesticides and fertilizers.

Table 5

**DNR Staff Positions Funded through the Environmental Management Account
FY 2002-03**

<u>Division and Bureau</u>	<u>Estimated FTE Staff¹</u>
Division of Air and Waste	
Remediation and Redevelopment	42.5
Waste Management	16.0
Management Position within Division	0.5
Division of Water	
Drinking Water and Groundwater	13.0
Watershed Management	8.0
Management Position within Division	<u>1.0</u>
Total	81.0

¹ These figures were provided by DNR and represent positions funded through the environmental management account, which includes revenues from pesticide and fertilizer fees as well as numerous other fees.

DNR officials were able to provide information pertaining to pesticide and fertilizer activities within the Bureau for Remediation and Redevelopment, where staff learn of chemical spills through self-reporting and DNR enforcement activities. When learning of a spill, DNR staff respond on an emergency basis, assess the nature and severity of the spill, and devise a cleanup plan. From FY 1997-98 through FY 2001-02, DNR staff recorded 1,807 spill reports, including 131, or 7.2 percent, for pesticides or fertilizers.

Cleanup activities at spill sites are performed by the party responsible for an incident, by DNR, or by the federal government. DNR takes the lead role in cleaning up chemical spills—including pesticide and fertilizer spills—when the responsible party is unknown, when DNR has not demonstrated responsibility, or when the responsible party is unwilling or unable to clean up the spill. From FY 1997-98 through FY 2001-02, DNR performed 257 individual site cleanups, although only 12 of these, or 4.7 percent, were for pesticide or fertilizer spills. Cleanups typically take more than one year to complete.

In general, DNR staff time specific to pesticide and fertilizer activities is not recorded. However, DNR reports contract expenditures of \$2.7 million for salaries, laboratory fees, and supplies associated with the 12 pesticide and fertilizer cleanup sites at which it was the lead agency. The documented contract costs represent 41.5 percent of the pesticide and fertilizer fee revenues DNR received from FY 1997-98 through FY 2001-02. In addition, DNR records indicate that during this five-year time period, staff in the Department spent 5,220 hours on these 12 pesticide and fertilizer cleanup sites.

University of Wisconsin System

As shown in Table 6, a total of \$1.3 million in fertilizer fees was transferred to UW System for research and outreach activities from FY 1997-98 through FY 2001-02. Included in this amount is \$622,383 used by the Wisconsin Fertilizer Research Fund Program, which studies fertilizer efficiency, plant nutrition, and groundwater and surface water protection that can improve agricultural profitability and protect resources. The program also provides information related to fertilizer use to Wisconsin farmers. The seven-member Fertilizer Research Council, located within DATCP and comprised of state agency and industry representatives, recommends research projects to be funded within UW System.

Table 6

Fees Transferred to UW System

	<u>1997-98</u>	<u>1998-99</u>	<u>1999-2000</u>	<u>2000-01</u>	<u>2001-02</u>	<u>Total</u>
Research	\$136,999	\$138,112	\$130,917	\$129,902	\$ 86,453	\$ 622,383
Education and Outreach	<u>141,074</u>	<u>142,431</u>	<u>135,265</u>	<u>134,453</u>	<u>123,895</u>	<u>677,118</u>
Total Transferred ¹	\$278,073	\$280,543	\$266,182	\$264,355	\$210,348	\$1,299,501

¹ An additional \$1,266 should have been transferred during the five-year period but was not because of DATCP error.

Fertilizer fees that fund education and outreach help to support UW-Extension's Nutrient and Pest Management Program, which provides education and outreach on the efficient use of fertilizers to farmers and other businesses. In FY 2001-02, the program used \$123,895 in fertilizer fees to support 2.0 FTE outreach specialists. It also receives GPR funding.

Future Considerations

During the course of our review, we identified three issues that require further monitoring:

- First, DNR cannot fully document its expenditures of the pesticide and fertilizer fees it receives.
- Second, the reporting of fund balances could be improved.
- Finally, although DATCP and DNR have developed a memorandum of understanding to guide their regulatory activities pursuant to statutes and administrative code, portions of the memorandum of understanding have not been consistently implemented.

DNR Reporting

As noted, DNR does not document how it spends pesticide and fertilizer fees and is also unable to account for the actual time its staff spend on pesticide and fertilizer-related activities. The actual count of cleanup sites is quite low, but DNR managers state that staff frequently encounter pesticide and fertilizer contamination as they conduct other duties. DNR managers therefore believe it would be too difficult for staff to report all time spent on specific pesticide and fertilizer activities. However, our review of DNR's FY 2000-01 activity codes handbook demonstrates that staff already are required to be very specific in documenting many activities they work on, even noting the sites at which they conduct various activities. In addition, DNR staff indicate that activity codes are routinely updated.

Recent legislative action has signaled interest in quantifiable information related to DNR activities associated with pesticide and fertilizer revenues. In the 2003-05 biennial budget, the Legislature amended the statutory requirement that fees deposited into the DATCP management fund be transferred to DNR and required instead that DNR request expenditure authority under s. 13.10, Wis. Stats., when it seeks reimbursement of site cleanup costs. These amendments were vetoed by the Governor. However, given the current interest in the use of pesticide and fertilizer fees and the minimal amount of quantifiable information related to DNR activities associated with pesticides and fertilizers, *we recommend that by December 31, 2003, the Department of Natural Resources establish time-keeping codes specific to pesticide and fertilizer activities.*

Reporting of Fund Balances

As shown in Table 7, in the four fiscal years from FY 1998-99 through FY 2001-02, the Legislature mandated \$4.0 million in transfers, mostly from unspent revenues in the management and cleanup funds, to the General Fund. Of the \$4.0 million transferred, \$3.0 million was from fees and surcharges, and the remainder was from interest earned. One reason for the unspent revenue was, as noted, the greater than expected pesticide and fertilizer revenue. In addition, the Legislature took action in 2001 Wisconsin Act 109 to identify unspent funds in all agencies that could be used to resolve the budget deficit; for example, UW System fee revenue was reduced by \$35,000.

Table 7

Legislatively Required Transfers to the General Fund

<u>Agency</u>	<u>Amount Transferred</u>	<u>Fiscal Year</u>	<u>Act Requiring Transfer</u>
DATCP			
Agricultural Chemical Cleanup Fund	\$ 986,184	1998-99	1997 Wisconsin Act 27
	1,500,000	1999-2000	1999 Wisconsin Act 9
	500,000	2000-01	1999 Wisconsin Act 9
Agrichemical Management Fund	1,000,000	1999-2000	1999 Wisconsin Act 9
UW System	<u>35,000</u>	2001-02	2001 Wisconsin Act 109
Total Transferred	\$4,021,184		

As of June 30, 2002, the balances in the management and cleanup funds were at their lowest levels since FY 1997-98. If the Legislature wishes to monitor these fund balances more closely, it could direct DATCP to:

- develop periodic reports summarizing the total of all fees and surcharges collected and the funds to which the fees and surcharges are deposited; and
- update annually the fund condition statements, which show beginning fund balances, revenues, expenditures, transfers, and ending fund balances for the relevant funds and agencies.

Regular reporting would also allow the Legislature to determine whether fee and surcharge levels are set appropriately in order to avoid the development of large fund balances.

Memorandum of Understanding

State statutes, administrative code, and a memorandum of understanding signed in August 1994 between DNR and DATCP provide both agencies with regulatory authority for pesticides and fertilizers. DNR has broader statutory authority to regulate the reporting, investigation, and remediation of hazardous substance discharges, as well as the generation, storage, transportation, treatment, and disposal of solid and hazardous waste, including agricultural chemical wastes. Statutes direct DATCP to collect and distribute fees and surcharges, as well as to manage the general operations of the cleanup grant program.

The memorandum of understanding reasonably provides for a coordinated reporting and record-keeping system for DATCP and DNR. For example, each agency is to maintain records for the facilities and activities it regulates. DATCP and DNR are each to prepare and maintain a list of sites where soil and/or groundwater contamination is suspected or known from a point source discharge of agricultural chemicals and then provide the other agency with a current copy of these lists and updates at least once every six months. This information would enable management in both departments to assess the level of demand for the program's resources.

A formal exchange of these lists, however, has not occurred since 1994. During the course of our review, staff in both agencies reported that the terms of the memorandum of understanding are under review to reflect both current practices and needed procedural updates. To enable the Legislature to monitor the progress of DATCP and DNR in updating and implementing the memorandum of understanding, we recommend the Department of Natural Resources and the Department of Agriculture, Trade and Consumer Protection report to the Joint Legislative Audit Committee by December 31, 2003, on the status of the memorandum of understanding regarding regulatory activities on pesticides and fertilizers.
